

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G. O. Rt. No. 20/AIL/Lab./J/2010, dated 3rd February 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 26/2003, dated 12-11-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of Sri Bharathi Mills and Pudukai Mill Thozhilalargal Sangam, Puducherry, over non-regularisation of 12 workers in service has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the Notification issued in Labour Department's G. O. Ms. No.20/91/Lab/L., dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Thursday, the 12th day of November 2009

I.D. No. 26/2003

The President/Secretary,
Pudukai Mill Thozhilalargal Sangam,
42, Cuddalore Road,
Bharathi Mill Thittu,
Mudaliarpet, Pondicherry-4 . . . Petitioner

Versus

The General Manager,
Sri Bharathi Mills,
P.O. Box No. 10, Mudaliarpet,
Pondicherry-4 . . . Respondent

This industrial dispute coming on 7-11-2009 for final hearing before me in the presence of Thiru Durai Arumugam, representative for the petitioner and Thiru L. Sathish, Advocate for the respondent, upon hearing both sides and perusing

the case records and having stood over for consideration till this day, this Court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No. 122/2001/AIL/Lab./J/03, dated 2-9-2003 for adjudication of the following industrial dispute that arose between the management of M/s. Sri Bharathi Mills, Pondicherry and Pudukai Mill Thozhilalargal Sangam over non-regularisation of 12 workers in service.

(a) Whether non-regularisation of the following twelve workers *viz.*, (1) A. Elumalai, (2) M. Kuppusamy, (3) M. Muthuvel, (4) M. Kannan, (5) G. Natarajan, (6) L. Munusamy, (7) M. Seenuvasan, (8) S. Balakrishnan, (9) S. Manoharan, (10) K. Desingh, (11) B. Baskaran, (12) V. Venkatesan in service is justified or not? If not justified, what remedy they are entitled to?

(b) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner union in its claim statement has averred as follows:

Out of the 12 workmen cited in the reference 8 workmen have been working in the mill for over 14 years while the remaining 4 workmen have been working for over 10 years as labourers. The respondent management has not regularised the service of these workmen and they have not given equal pay for equal work. But the management has extracted works from these workmen without paying due pay. Despite several demands made by these workmen to regularise their services, the respondent management did not pay heed to their request but threatened them to terminate from their services. Therefore, the 12 workmen approached the petitioner union praying to take up the matter with the respondent and for regularising their services and for considering them as mill workers. Although the petitioner union took up the matter to the respondent, the respondent did not consider their claim. Therefore the matter was taken up before the Labour Officer (Conciliation) but the respondent management levelled false allegations and therefore the

conciliation ended in failure. The workmen have been working in the respondent mill as designers, siders in spinning department, coal carriers in boiling section besides other works as that were assigned by the respondent. Further when regular workman absented from work these workmen to work as substitute.

3. Before the Conciliation Officer, the respondent has denied that these workmen have worked for over ten years forgetting the fact that these workmen have been issued with Identity Card by the E.S.I. Corporation. Further the concerned department have certified to the management in writing that these workers have worked for over ten years and that they have worked truly and honestly and have behaved properly. As these workmen have been engaged in production activities, the petitioner has prayed to regularise the services of these workmen.

4. In the counter statement filed by the respondent it is stated that 8 workmen mentioned in the petition were worked as casual coolies for attending miscellaneous works like debris removal, sweeping waste removal, gardening, white washing, loading and unloading goods, roof cleaning and other minor civil works and that these works are of temporary nature lasting for certain hours in a day or for few days in a month and they are not a matter of daily affair in the mill. The respondent has denied that these workmen have been in the employment for more than 10 years. The 12 workmen working as casual coolies would come to the mill voluntarily to their own accord and they would be engaged for a particular work and paid wages accordingly. In case where there is no work, these workmen would return back home. Further as per the existing 18(1) or 12(3) Settlements, miscellaneous works are not covered under any category or works assigning duties and responsibilities to the workers. As there has been a ban by the Government of India for fresh recruitment in the mill for the past 13 years, no provision was made to categorise the said miscellaneous works and employment of workers on regular basis. It is also contended that the casual workers and coolies were also working as contractors at times when their services were required for miscellaneous work and payments were made directly to them. There is no contract of service or employment between the mill and the workmen and their names are not found in the muster rolls of the regular employees and the mill does not exercise any disciplinary action against the casual coolies. Hence they prayed for the dismissal of the petition.

5. Now the point for determination is:

Whether the 12 workmen noted in the annexure of the reference are entitled for regularisation in service?

6. On the side of the petitioner, one Elumalai was examined as P.W. 1 and Ex.A1 to Ex.A4 were marked and one Devarasu was examined as P.W.2. On the side of the respondent R.W. 1 was examined and Ex.B1 to Ex.B9 were marked.

On the point:

7. It is the case of the petitioners that out of the 12 workmen 8 of the workmen have been working in the mill over 14 years while 4 of them are working for over 10 years. To establish the same one Elumalai was examined as P.W.1 and P.W.1 is one among the 12 workmen. He has given evidence that he has been working in the mills for nearly 12 years and he has been offered work regularly in the Spinning Department as Dopper and Designer and also in the Boiler Section and that he used to sign the Attendance Register in the respondent mill. He has marked Ex.A3 E.S.I. Identity Card issued by the E.S.I. Corporation. A perusal of Ex.A3 goes to show that Elumalai has entered into the service of the mill with effect from 4-7-1994 with Employees Code No. 13002. Therefore it is clear that Elumalai who is at Serial No.1 among the 12 workmen has completed nearly 10 years of service as on the date of filing of the present industrial dispute. So also the xerox copies of E.S.I. Identity Cards of rest of the workmen are produced and marked as Ex.A3 series. The entries in E.S.I. Cards goes to show that all these workmen have discharged nearly 10 years of service and therefore the contention of the respondent that these workmen have not discharged 10 years of service cannot be accepted. It is also the case of these workmen that they have been working in various departments of the mill and they have been kept in reserve and were substituted during the absence of regular workmen. There is no contra evidence adduced by the respondent mill to show that these workmen were not allowed to work in the machines. P.W.2 in his evidence would state that these 12 workmen have been working in various department of the mill and they were stopped from work without any valid reason. P.W.2 is admittedly working in the respondent mill as Machineman on regular basis. The respondent has not adduced any contra evidence to disprove the evidence of P.W.2. It may be true that the services of these workmen might have been utilised by the mills for doing casual jobs like gardening, loading

and unloading, debris removal etc. on that basis when they cannot be offered work on the machines in the mill. Above all a perusal of Ex.A4 goes to show that the petitioners have produced an attested copy of the petition submitted by these workmen praying for enhanced salary wherein a note submitted to the Officer on Special Duty, it has been stated that the petitioners have been engaged by the mill for the last 10 years as contract coolies, gate casuals etc., and that their services were being utilised in many ways and that they are very sincere and non-problematic workers and presently they have been paid wage of Rs.55 per day and therefore, considering their long standing service and the help they are providing for the management at times of emergency and need it would be justified to raise their daily wages from Rs.55 to 70. Further the Factory Manager has endorsed that whenever casual labourers are engaged in spinning, they may be paid as per the department in which they are engaged and when they are engaged in Engineering Department for skilled jobs, they may be paid Rs.75 per day. Therefore, from the above note of the Mill Authorities, it is crystal clear that the workmen have been engaged by the mill for skilled jobs and for substituting regular workmen who are on leave. Therefore, this court finds that it is not correct on the part of the management to say that these 12 workmen have not been offered any skilled job in the mill but they offered work as casual coolies for attending miscellaneous work and unskilled works.

8. The respondent has produced certain documents and marked the same as Ex.B2 to Ex.B9 to show that some of the workmen have been doing contract work in the mill and therefore, it is false to say that they are workmen in the mill. It has to be seen that the mill might have engaged these workers to do certain work on contract basis for the reason that the workers should complete the work within a specified time without dragging on for want of money. Further none of the documents bear the code number of these workmen in the bills. Therefore, this court is not inclined to believe Ex.B2 to B9. This court is of the opinion that the respondent mill being the Government of India Undertaking cannot suck the blood of the workers by employing them under different categories and refusing them regular employment even after they performed several years of service. If such practices are allowed, it will pave way for the illegal employment market, resulting in denial of employment for deserving and genuine workers who have put in more than 10 years of service and offering work to other persons

whom the mill officers desire to employ. Therefore, for the reasons stated above, this court finds that the 12 workmen who have completed 10 years of service are entitled for regularisation of service and such regularisation should be effected in phased manner on the basis of seniority-*cum*-suitability and subject to availability of vacancies, until this workmen are regularised, the mill shall not make fresh employment from outside. On regularisation, these 12 workmen shall be entitled to time scale and other benefits as available to regular employees.

9. The learned counsel for the respondent relied upon the rulings reported in—

1. 2002 STPL (LE) 30859 S.C. - Range Forest Officer Vs. S.T. Hadimani, State of Karnataka and Another Vs. S.T. Hadimani.

2. CDJ 2003 - BHC-1646 - Baratiya Dak Tar Mazdoor Manch through its President Vs. General Manager, Kalyan Telecom District and Another,—

to show that the onus to prove that the workmen has completed 240 days in employment is on the petitioner. This court finds that the rulings shall not be applicable to the facts of the present case because, the petitioners have adduced sufficient proof to show that they have been in employment of the mill for over 10 years and the management has not disproved the said evidence. The learned counsel has also relied upon the rulings reported in—

1. 1994 STPL (LE) 19748 S.C. - Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and Another.

2. 2000-III-LLJ (Suppl) - 353 - Union of India Vs. Uma Maheswari and Others.

3. 1997 III -LLJ (Supp.) -1293

4. 1996-II-LLJ- Karnataka - 458 - S. Suresh Vs. Indian Airlines.

5. 1998 - III -LLJ (Supp) -H.P.-II - Deputy General Manager, H.R.T.C. Vs. Presiding Officer, Labour Court and Others,

to show that the regularisation of casual or *ad hoc* workers simply because they have worked for a long time is not a matter of right. This court finds the said rulings cannot be applied to the facts of the case on hand because the respondent management has not produced any evidence before this court that there is scheme framed by the Government to that effect or that

the employment of these workmen are from back doors or by illegal means. Therefore, these rulings cannot be applied to the facts of the present case.

The point is answered accordingly.

10. In the result, Award is passed and the Industrial Dispute is allowed. The respondent mill is hereby directed, to regularise the twelve employees named by the petitioner in service and such regularisation should be effected in phased manner on the basis of seniority-*cum*-suitability and subject to availability of vacancies and that the respondent is hereby directed not to make fresh employment from outside until this workmen are regularised and that on regularisation these 12 workmen shall be entitled to time scale and other benefits as available to regular employees. No cost.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 12th day of November, 2009.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Puducherry.

List of witnesses examined for the petitioner

P.W.1— Dated 27-3-2006 A. Elumalai

P.W.2 — Dated 16.1-1.2006 Devarasu

List of witnesses examined for the respondent :

R.W.1 — Dated 16-11-2006 Muniandi

List of exhibits marked for the petitioner :

Ex.A1.— 27-3-2006 Copy of the strike (notice) letter, dated 13-3-2003 by the petitioner to the respondent.

Ex.A2.— 27-3-2006 Copy of the letter, dated 22-4-2003 by the respondent to the Labour Conciliation Officer, Pondicherry.

Ex.A3.— 27-3-2006 Copy of the E.S.I. Identity Cards of the workmen.

Ex.A4.— 27-3-2006 Copy of the letter given by the workmen to the respondent mill.

List of exhibits marked for the respondent :

Ex.B1.— 13-3-2008 Authorisation letter given by the respondent mill, dated 13-3-2008 to R.W.I-Muniyandi.

Ex.B2.— 13-3-2008 Letter, dated 4-12-2006 by one M. Kuppasamy to the respondent mill.

Ex.B3.— 13-3-2008 Letter, dated 4-12-2006 by one M. Muthuvel to the respondent mill.

Ex.B4.— 13-3-2008 Letter, dated 18-12-2006 by one M. Kuppasamy to the respondent mill.

Ex.B5.— 13-3-2008 Cash payment voucher, dated 19-12-2006.

Ex.B6.— 13-3-2008 Cash payment voucher, dated 20-12-2006.

Ex.B7.— 13-3-2008 Cash payment voucher, dated 20-12-2006.

Ex.B8.— 13-3-2008 Cash receipt given by one Gunasekaran, Contractor.

Ex.B9.— 13-3-2008 Cash payment voucher, dated 20-12-2006.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 3818/CEO/KKL/E3/(Exam.)/2010/306.

Karaikal, the 8th February 2010.

NOTIFICATION – I

It is hereby notified that the original H.S.C. Mark Certificate under Register Number 711797, bearing Serial No. HSV 0044014 of March 2003 session in respect of Mohamed Abubaker, H., an ex-pupil of Government Higher Secondary School, Thirunallar, Karaikal is reported to have been lost beyond the scope of recovery and it is proposed to issue a